

MICHAEL FLINNER, V30064,	)	
	)	
Plaintiff(s),	)	No. C 14-5472 CRB (PR)
	)	
vs.	)	ORDER OF DISMISSAL
	)	
STATE OF CALIFORNIA, et al.,	)	(Dkt. #2 & 4)
	)	
Defendant(s).	)	
	)	

Plaintiff also moves for leave to proceed in forma pauperis and to file additional exhibits in support of his complaint. Good cause appearing, plaintiff's motions (dkt. #2 & 4) are GRANTED.

### A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such

1 relief.” Id. § 1915A(b). Pro se pleadings must be liberally construed. Balistreri  
2 v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1990).

3 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two  
4 elements: (1) that a right secured by the Constitution or laws of the United States  
5 was violated, and (2) that the alleged violation was committed by a person acting  
6 under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

7 B. Legal Claims

8 Plaintiff’s claim for equitable relief is barred under the principles of  
9 abstention. Under principles of comity and federalism, a federal court should not  
10 interfere with ongoing state criminal proceedings by granting injunctive or  
11 declaratory relief absent extraordinary circumstances. See Younger v. Harris,  
12 401 U.S. 37, 43-54 (1971). The rationale of Younger applies throughout  
13 appellate proceedings, requiring that state appellate review of a state court  
14 judgment be exhausted before federal court intervention is permitted. See  
15 Dubinka v. Judges of the Superior Court, 23 F.3d 218, 223 (9th Cir. 1994).

16 Only in cases of proven harassment or prosecutions undertaken by state  
17 officials in bad faith without hope of obtaining a valid conviction, and perhaps in  
18 other special circumstances where irreparable injury can be shown, is federal  
19 injunctive relief against ongoing state criminal proceedings appropriate. See  
20 Perez v. Ledesma, 401 U.S. 82, 85 (1971). Abstention also may be inappropriate  
21 if the state tribunal is shown to be incompetent by reason of bias. See Gibson v.  
22 Berryhill, 411 U.S. 564, 577-79 (1973). But petitioner makes no such showing –  
23 he does not make any plausible non-conclusory allegation of harassment, bad  
24 faith, irreparable harm or bias of the tribunal. Cf. Younger, 401 U.S. at 46, 53-54  
25 (cost, anxiety and inconvenience of criminal defense is not the kind of special  
26 circumstance or irreparable harm that would justify federal intervention).

1 Abstention is warranted under Younger.<sup>1</sup>

2 Plaintiff also seeks money damages from defendants – the State of  
 3 California and its Governor and Attorney General. But the Eleventh Amendment  
 4 bars from the federal courts suits for damages against a state by its own citizens,  
 5 see Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 237-38 (1985), and against  
 6 state officials sued in their official capacities, see Kentucky v. Graham, 473 U.S.  
 7 159, 169-70 (1985). Plaintiff's claim for damages is barred by the Eleventh  
 8 Amendment. It is also barred by the rationale of Heck v. Humphrey, 512 U.S.  
 9 477 (1994), because a judgment in favor of plaintiff on his claim for damages  
 10 would imply the invalidity of a state conviction which has not already been  
 11 invalidated. See 512 U.S. at 486-87 (a claim for damages bearing that  
 12 relationship to a conviction or sentence that has not been so invalidated is not  
 13 cognizable under § 1983).

## 14 CONCLUSION

15 For the foregoing reasons, the complaint is DISMISSED for failure to  
 16 state a claim under the authority of 28 U.S.C. § 1915A(b).

17 The clerk shall enter judgment in accordance with this order, terminate all  
 18 pending motions as moot and close the file.

19 SO ORDERED.

20 DATED: Jan. 5, 2015

  
 21 CHARLES R. BREYER  
 United States District Judge

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24 <sup>1</sup>To the extent plaintiff seeks federal relief from his conviction and  
 25 sentence, he must do so by way of a petition for a writ of habeas corpus under 28  
 26 U.S.C. § 2254 after exhausting available state judicial remedies. See Hill v.  
 27 McDonough, 547 U.S. 573, 579 (2006) (challenges to lawfulness of confinement  
 28 or to particulars affecting its duration are province of habeas corpus).